

REMARKS

Applicant would like to thank the Examiner for the personal interview conducted on January 31, 2006 between applicant's representative John Davis, the Examiner and the Examiner's supervisor. All pending claims were discussed. Applicant has amended the claims in a manner suggested by the Examiners to define over the prior art of record.

Applicant has cancelled claims 14-20 as a result of a restriction requirement issued by the Examiner.

Claim 7 was rejected under 35 U.S.C. §112, second paragraph, for being indefinite. Applicant has amended claim 7 to overcome this rejection.

Claims 1-3 and 6-9 were rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 3,491,909 issued to Ikelheimer. Applicant has amended independent claim 1 to overcome this rejection.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ikelheimer in view of U.S. Patent No. 6,189,697 issued to Davis. Applicant has amended independent claim 1 to require a partition assembly including intersecting slotted partitions. Neither the Ikelheimer or Davis references disclose, teach or suggest slotted intersecting partitions. An Examiner may not ignore a limitation which is absent from the reference or references used in an obviousness rejection. In re Fine, 837 F. 2d 1071, 5 USPQ2d. 1596 (Fed. Cir. 1988).

Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ikelheimer in view of U.S. Patent No. 4,403,638, issued to Baum and further in view of Davis.

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Applicant has amended independent claim 1 to require a partition assembly including intersecting slotted partitions. Neither the Ikelheimer or Baum or Davis references disclose, teach or suggest slotted intersecting partitions. An Examiner may not ignore a limitation which is absent from the reference or references used in an obviousness rejection. In re Fine, 837 F. 2d 1071, 5 USPQ2d. 1596 (Fed. Cir. 1988). Furthermore the Baum reference is directed to non-analogous art. A reference which is not directed to analogous art has no bearing on the obviousness of a patent claim under 35 U.S.C. §103(a). Jergins v. McKenzie, 927 F.2d 1152 (Fed. Cir. 1991).

Claims 10-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,595,246, issued to Bross in view of Baum. Applicant has amended independent claims 10 and 12 to require a flexible tab at the end of one of the partitions, the flexible tab comprising a second component of the two part hook and loop fastener adapted for engagement with the first component, wherein the tab may be bent to either side of the slotted partition to engage the first component. Neither the Bross or Baum references disclose, teach or suggest such a flexible tab. An Examiner may not ignore a limitation which is absent from the reference or references used in an obviousness rejection. In re Fine, 837 F. 2d 1071, 5 USPQ2d. 1596 (Fed. Cir. 1988). Furthermore the Baum reference is directed to non-analogous art. A reference which is not directed to analogous art has no bearing on the obviousness of a patent claim under 35 U.S.C. §103(a). Jergins v. McKenzie, 927 F.2d 1152 (Fed. Cir. 1991).

Furthermore, the Examiner has not established a prima facie case of obviousness. The Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ.2d 1443, 1444 (Fed. Cir. 1992). Only if the Examiner

meets this burden does the burden shift to applicant to come forward with evidence or an argument. *Id.* If examination at the initial stage does not produce a prima facie case of obviousness, then without more, the applicant is entitled to grant of the patent. *Id.* A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 782, 26 USPQ.2d 1529, 1531 (Fed. Cir. 1993).

In other words, to properly combine references to make a prima facie case of obviousness, case law requires that there must have been some teaching, suggestion or inference in either one of the references, or both, or knowledge generally available to one of ordinary skill in the relevant art which would have led one skilled in the art to combine the relevant teachings of the two references. See e.g. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 USPQ 929, 933 (Fed. Cir. 1984); *W. L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 311 (Fed. Cir. 1983); and *In re Dembiczak*, 50 USPQ2d 1614, (Fed. Cir. 1999).

Applying the law to the facts of the instant case, there is no teaching, suggestion or inference of modifying the Bross spacer system to include a two part hook and loop fastener. Without such a teaching, suggestion or inference in Bross, the combination of references used the Examiner is improper. Neither is there any teaching, suggestion or inference of modifying the Bross spacer system so that the Bross partitions are secured to the walls of a container.

The combination of the references is further improper because the Examiner has simply used applicant's claims as a blueprint to abstract bits and pieces of the prior art together, through hindsight to make the above § 103 rejection. It must be recognized that a combination of

prior art is improper and not “obvious” if the only suggestion or reason for combining the teachings of the prior art is to be found in the present application. In re Pye & Peterson, 148 USPQ 426 (CCPA 1966). Furthermore, it must be recognized that the fact that disclosures of references can be combined does not make the combination “obvious” unless the art also contains something to suggest the desirability of the combination. In re Rinehart, 189 USPQ 143 (CCPA 1976); In re Regel, 188 USPQ 136 (CCPA 1975); In re Avery, 186 USPQ 161 (CCPA 1975); In re Imperato, 179 USPQ 730 (CCPA 1973); and In re Andre, 144 USPQ 497 (CCPA 1965).

It is submitted that the Examiner has simply used the claims of this application as a blueprint and abstracted individual teachings from the cited pieces of prior art to create the combinations upon which he rejected the claims of the application. This was error as a matter of law. W.L. Gore, 220 USPQ at 312 (Fed. Cir. 1983).

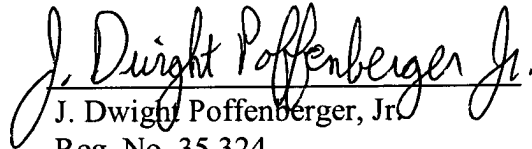
In view of the foregoing remarks given herein, applicant respectfully believes this case is in condition for allowance and respectfully requests allowance of the claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner’s prompt attention to this matter is appreciated.

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Applicant is of the opinion that an additional fee of \$150.00 is due. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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